



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,336	06/28/2005	Sergio Fantini	10851-008US1	2806
26161	7590	08/06/2010	EXAMINER	
FISH & RICHARDSON PC			JAWORSKI, FRANCIS J	
P.O. BOX 1022				
MINNEAPOLIS, MN 55440-1022			ART UNIT	PAPER NUMBER
			3768	
			NOTIFICATION DATE	DELIVERY MODE
			08/06/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/507,336	FANTINI, SERGIO	
	<b>Examiner</b>	<b>Art Unit</b>	
	FRANCIS JAWORSKI	3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 March 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 34 - 48 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 34 - 38, 41 - 45 and 47 - 48 is/are allowed.  
 6) Claim(s) 39 - 40 and 46 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

[Claims 1 – 33 have been withdrawn pursuant the the restriction requirement set forth in the Office action of 12/11/08. Claims 34 – 48 are present for examination.]

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 39 – 40 and 46 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the case of each of claims 39 and 46 it is unclear whether and how the illuminating of the sample with plural wavelengths relates to the antecedent (selected) wavelengths and the calculations and/or measures and/or determination or comparisons that are associated therewith. In other words it is unclear that these claims bear any relationship to the activities set forth in the parent claims and/or to a malignant/benign tumor determination process.

Dependent claim 40 inherits the defect.

### ***Allowable Subject Matter***

Claims 34 – 38, 41 – 45 and 47 – 48 are allowed.

### ***Response to Arguments***

Applicant's arguments, see the Amendment and Request for Reconsideration, filed March 11, 2009 with respect to all claims actively under examination have been fully considered and are persuasive. The prior art rejection of 34 - 48 has been withdrawn.

No rejections remain on prior art. Resolution of these issues will result in allowance of this case.

Claims 1 – 33 stand withdrawn having been elected without traverse. The Examiner will therefore cancel these claims by Examiner's Amendment when the case is otherwise in condition for allowance. See MPEP821.02.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The following art is cited to complete the record: Carroll (US4515165), Chance (US6192260), Lee (US6064474), Cheng (US6587703), Boas et al (US6985763), Jobsis (US6594513).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANCIS JAWORSKI whose telephone number is (571)272-8115. The examiner can normally be reached on weekdays from 11AM to 3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le, can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/FRANCIS JAWORSKI/

Application/Control Number: 10/507,336  
Art Unit: 3768

Page 5

Primary Examiner, Art Unit 3768